IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.895 OF 1991

Maharashtra State Road Transport
Corporation, Bombay ...Appellant

Vs.

1.Krishnaji Arjun Nachankar
2.Sou.Shalinibai Krishnaji Nachankar ...Respondents

Mr.C.M.Lokesh i/b Mr.G.S.Hegde for the Appellant
Mr.S.G.Karandikar for the Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.
DATED: MARCH 27,2006.

ORAL JUDGMENT:

1. Heard learned Counsel for the Appellant. The Appellant has taken exception to the Judgment and Order dated 2nd July 1991 passed by the learned Civil Judge (Senior Division), Ratnagiri. By the said Judgment and Order the learned Judge has allowed the claim for compensation made by the Respondents under the Workmen's Compensation Act, 1923 (hereinafter referred to as the said Act of 1923).

2. The case of the Respondents herein is that admittedly deceased Nandkumar was employed with the Maharashtra State Road Transport Corporation as a Driver at Deorukh Depot. The case of the Respondents is that the deceased died while on duty as a driver. The defence of the Appellant appears to be that at the time of death, the deceased was not on duty and

he died after his duty came to an end i.e. after 6.30 p.m.

3. The learned Advocate for the Appellant submitted that even the Tribunal found that the deceased was not on duty at the time when the death occurred. He submitted that the compensation under the said Act of 1923 could not have been awarded. He submitted that the learned Trial Judge had no jurisdiction to entertain the claim under the said Act of 1923.

4. I have considered the submissions. The Appellant has not adduced any evidence. One of the claimants stepped into witness box. He stated that the deceased expired while he was discharging his duty with the Appellant. In response to the suggestion given in the cross examination, the Respondent No.1 stated that his son died while he was lying in the S.T.Bus. However, he was not able to say whether he was working at that time. No specific suggestion was given in the cross examination that the death occurred when duty hours of the deceased were over.

5. The learned Judge has observed from the documents on record that the S.T.Bus was taken at a destination and during the period of halt the deceased Nandkumar expired. This is the finding recorded by the learned trial Judge. While dealing with the submissions of the Appellant, the learned

Judge has observed that even if the duty was taken as over, the workman was deemed to be in the employment because he had not returned back from the place of the duty at the time of death.

6. The evidence on record shows that the deceased was on duty while the death occurred. No evidence was adduced by the Appellant.

7. In the circumstances, no fault can be found with the impugned Judgment and Order. Appeal is, therefore, dismissed with no order as to costs.

Judge.